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9 Attorneys for Federal Plaintiff

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

14 **UNITED STATES OF AMERICA,**  
15 **Plaintiff,**

16 **v.**

17 **ALTOTECH, II L.P.,**

18 **Defendant.**  
19  
20

)  
) **E-Filing**  
)

) **Civil Case No. C06 3879 EMC**  
)

) **COMPLAINT FOR RECEIVERSHIP**  
) **AND PERMANENT INJUNCTIVE**  
) **RELIEF**  
)  
)  
)

21 COMES NOW Plaintiff, United States of America, on behalf of its agency, the Small Business  
22 Administration, and for its cause of action states as follows:

23 **PARTIES, JURISDICTION AND VENUE**  
24

25 1. This is a civil action brought by the United States of America on behalf of its agency,  
26 the Small Business Administration (hereinafter, "SBA"), whose central office is located at 409  
27  
28

**COMPLAINT FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEF**

**FILED**  
DISTRICT COURT OF GUAM

JUL - 5 2006

**MARY L.M. MORAN**  
**CLERK OF COURT**

nv 06 - 00020

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**COMPLAINT FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEF**

1 Third Street, S.W., Washington, D.C., 20416. The Defendant has stipulated and consented to the  
2 entry of the requested relief in this civil action.

3 2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of  
4 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311 and 316, 15 U.S.C. §§ 687(d), 687c  
5 and 687h; and 28 U.S.C. § 1345.

6  
7 3. Defendant, AltoTech II, L.P., (hereinafter, "AltoTech") is a California limited  
8 partnership.

9 4. Defendant, AltoTech maintains its principal office and/or principal place of business at  
10 One Lagoon Drive, Suite 100, Redwood Shores, California 94065. Venue is therefore proper under  
11 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. § 1391(b).  
12

#### 13 STATUTORY AND REGULATORY FRAMEWORK

14  
15 5. The purpose of the Small Business Investment Act (hereinafter the "Act") is to improve  
16 and stimulate the national economy, and small business in particular, by stimulating and  
17 supplementing the flow of private equity capital and long-term loan funds which small businesses  
18 need for sound financing of their operations and growth. 15 U.S.C. § 661.  
19

20 6. Congress authorized the SBA to carry out the provisions of the Act and to prescribe  
21 regulations governing the operations of Small Business Investment Companies (hereinafter "SBIC")  
22 15 U.S.C. § 687(c). SBA duly promulgated such regulations which are set forth at Title 13 of the  
23 Code of Federal Regulations, Part 107 (hereinafter the "Regulations").  
24

25 7. An SBIC is a corporation, limited liability company, or a limited partnership organized  
26 solely for the purpose of performing the functions and conducting the activities contemplated under  
27 the Act. 15 U.S.C. § 681(a). SBA is responsible for licensing SBICs. 15 U.S.C. § 681(c).  
28

8. An SBIC has the authority to borrow money, issue securities, promissory notes, or other obligations under such conditions and limitations as regulated by SBA. SBA is authorized to provide Leverage to SBICs through the purchase, or guarantee of payment, of debentures or participating securities issued by SBICs. 15 U.S.C. §§ 683(a) and (b).

9. Leverage provided to an SBIC in the form of Participating Securities is subject to the Regulations, including but not limited to the provisions of 13 C.F.R. §§ 107.1820-1850 and § 107.507. Section 107.1830 of the Regulations sets forth the maximum amount of capital impairment that an SBIC licensee may have based on the percentage of equity capital investments in its portfolio and its ratio of outstanding leverage to leverageable capital.

10. If an SBIC violates, or fails to comply with, any of the provisions of the Act or Regulations, all of its rights, privileges, and franchises may be forfeited and the company may be declared dissolved. 15 U.S.C. § 687(d).

11. Section 311 of the Act provides that if SBA determines that an SBIC licensee has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of the Act or Regulations, the SBA may seek, from the appropriate United States District Court, an order enjoining such act or practices, and upon a showing by the SBA that such licensee has engaged, or is about to engage, in any such act or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. In addition, the Court is authorized to appoint SBA to act as receiver for such licensee. 15 U.S.C. § 687c.

## STATEMENT OF FACTS

12. AltoTech was licensed by SBA as a small business investment company (“SBIC” or “Licensee”) on December 4, 2000, SBA License No. 09/79-0431, under Section 301(c) of the Act.

1 15 U.S.C. § 681(c), solely to do business under the provisions of the Act and the regulations  
2 promulgated thereunder.

3 13. Defendant's sole general partner is AltoTech Ventures, LLC.

4 14. The Amended and Restated Agreement of Limited Partnership of AltoTech submitted  
5 to SBA expressly provide that AltoTech was organized solely for the purpose of operating under the  
6 Act and subject to regulations issued by SBA thereunder.

7 15. In accordance with Section 303 of the Act, 15 U.S.C. §683b, SBA provided financing  
8 to AltoTech through the guarantee of the following participating securities totaling \$14,250,000:  
9

<u>Loan No.</u>	<u>\$ Principal</u>	<u>Issue Date</u>
02040651-09	2,000,000	December 4, 2001
02040652-07	2,000,000	January 4, 2002
02040653-05	4,000,000	May 13, 2002
02040654-03	2,000,000	June 5, 2002
02040655-01	3,000,000	May 12, 2003
02040656-10	1,250,000	December 3, 2004

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17 (hereinafter referred to collectively as the "Participating Securities").

18 16. Section 107.1830(c) of the Regulations requires that Defendant not have a condition of  
19 Capital Impairment of greater than eighty five (85%), as that term is defined under the Regulations.

20 17. Based on Defendant's financial statements (SBA Form 468) for the period ending  
21 March 31, 2005, SBA determined that Defendant had a condition of Capital Impairment, as that  
22 term is defined under the Regulations of ninety six and one half percent (96.5%).  
23

24 18. By letter dated July 8, 2005, Defendant was given an opportunity to cure its Capital  
25 Impairment within 15 days of the date of that letter. Defendant failed to cure its Capital Impairment  
26 within the time permitted.  
27  
28

1 19. By letter dated February 16, 2006, SBA notified Defendant that it had been transferred  
2 to liquidation status. To date, AltoTech has failed to cure its capital impairment.

3 COUNT ONE

4 CAPITAL IMPAIRMENT

5  
6 20. Paragraphs 1 through 19 are incorporated by reference as though set forth in their  
7 entirety herein.

8 21. Section 107.1830(b) of the Regulations provides that if you have a condition of Capital  
9 Impairment, you are not in compliance with the terms of your leverage. 13 C.F.R. § 107.1830.

10 22. Section 107.507(a) of the Regulations provides that nonperformance of any of the requirements  
11 of any Participating Security shall constitute a violation of the Regulations. 13 C.F.R. § 107.507.

12  
13 23. To date, Defendant has failed to cure its condition of Capital Impairment, as defined  
14 under the Regulations, and a balance of \$14,250,000 of Participating Securities purchased by SBA  
15 remains outstanding.

16 24. AltoTech's violation of the Regulations for capital impairment and nonperformance of  
17 the requirements of a Participating Security entitles SBA to relief pursuant to 15 U.S.C. § 687c,  
18 including injunctive relief and appointment of SBA as Receiver of Prospero.  
19

20  
21 WHEREFORE, Plaintiff prays as follows:

22 A. That injunctive relief, both preliminary and permanent in nature, be granted restraining  
23 AltoTech, its officers, agents, employees and other persons acting in concert or participation  
24 therewith from: (1) making any disbursements of AltoTech's funds; (2) using, investing, conveying,  
25 disposing, executing or encumbering in any fashion any or all funds or assets of AltoTech, wherever  
26 located; or (3) violating the Act or the Regulations promulgated thereunder.  
27  
28

1 B. That this Court determine and adjudicate AltoTech's noncompliance with the  
2 requirements of the Participating Security and noncompliance and violation of the Act and the  
3 Regulations promulgated thereunder.

4 C. That this Court take exclusive jurisdiction of AltoTech, and all of its assets, wherever  
5 located, appoint SBA as permanent receiver of AltoTech for the purpose of liquidating all of  
6 Defendant's assets and satisfying the claims of creditors therefrom in the order of priority as  
7 determined by this Court, and pursuing causes of action available to AltoTech, as appropriate and  
8 subject to all the provisions of the settlement agreement.

9 D. That this Court order that AltoTech's license to operate as an SBIC shall be revoked  
10 upon the wind-up and conclusion of the receivership thereof.

11 F. That this Court grant such other and further relief as may be deemed just and equitable.

12  
13  
14  
15 Respectfully submitted,

16 KEVIN V. RYAN  
17 United States Attorney

18 Dated: June 21, 2006

19 By: /s/ Edwin L. Joe  
20 EDWIN L. JOE  
Special Assistant  
United States Attorney

21 Of Counsel:

22 ARLENE P. MESSINGER  
23 Assistant General Counsel for SBIC Enforcement

24 U.S. Small Business Administration  
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Washington, D.C. 20416

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17 United States Attorney

18 Dated: June 21, 2006

19 By: Edwin L. Joe  
20 EDWIN L. JOE  
21 Special Assistant  
22 United States Attorney

23 Of Counsel:

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